



March 10, 2021

Dear County and District Superintendents; Foster Youth Services Coordinating Program Coordinators; District Foster Youth Liaisons; County Welfare Directors; Chief Probation Officers; County Child Welfare Program Managers; Title IV-E Agreement Tribes; Independent Living Program Managers; Independent Living Program Coordinators; and Foster Family Agencies:

## **Educational Stability and Best Interest Determination**

This joint guidance document between the California Department of Education (CDE) and the California Department of Social Services (CDSS) is intended to provide local educational agencies (LEAs), child welfare agencies, and probation departments with guidance corresponding to conducting a best interest determination (BID). Foster youth must be enrolled or remain in their school of origin (SOO), unless there is a determination that it is not in their best interest to do so. Factors that must be considered in determining best interest include, but are not limited to: proximity of placement and appropriateness of the educational setting.

### **Background**

The implementation of the Continuum of Care Reform Act, Assembly Bill (AB) 403, Chapter 773, Statutes of 2015 (<https://bit.ly/30eOM0n>) has a stated goal of improving the state's child welfare system and generating faster paths to permanency for children and youth involved in the child welfare and juvenile justice systems. Out-of-home placement decisions made by child welfare agencies must be made in consideration of a number of factors, including laws that speak to educational stability.

The Every Student Succeeds Act (ESSA) includes provisions that are intended to increase educational stability and protect educational rights for children and youth in foster care. Under ESSA, it is assumed that the child's best interest is to remain in their SOO in the event of an out-of-home placement or a change in placement, unless otherwise determined. In deciding if the student shall remain in the SOO, a BID is made to determine whether a school move should occur based on a number of factors. Federal child welfare law 42 United States Code (USC) § 675(1)(G)(ii) (<https://bit.ly/33iaEdz>) requires the case plan for each foster youth include measures to

ensure the educational stability of the child. This plan must include assurances that the child welfare agency has coordinated with the LEA to ensure that the child remains in their SOO, unless it is not in the child's best interest. These decisions require collaboration and coordination between the placement agency (child welfare agency or probation), the Educational Rights Holder (ERH), the student when appropriate, and the LEA.

Educational Stability and Case Plan Assurances addressed in a CDSS *All County Letter (ACL)* 12–70 addresses educational stability provisions, case plan assurance, documentation, and educational transportation expenses. It includes a Best Practices Checklist for Developing the Education Stability Plan, Decision Making for Educational Stability Checklist, sample case plan reflecting documentation, and best practices for discussing education stability. The *Fostering Connections to Success and Increasing Adoptions Act of 2008 (Public Law [PL] 110–351)*, as discussed in *ACL* 11–51, requires that a case plan include measures for ensuring the educational stability of the child while in foster care. The law also added the cost of reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement as an allowable foster care maintenance cost (outlined further in *ACL* 11–51).

California statutes and rules of court clearly identify that the decision for school placement takes place at the initial detention or placement, or any subsequent change in placement for a foster child, and is made by the ERH and the youth/child with the consultation of the child welfare agency and the LEA. These statutes and requirements are found in:

- *California Education Code (EC)* Sections 48853(a)(3), and 48853.5(f)(6) & (7)
- *Welfare and Institutions Code (WIC)* Sections 361(a)(4)(A), 319(j), and 726(c)(1)
- *California Rules of Court (CRC)* 5.650 and 5.651

What follows is a discussion, based on federal guidance and California statute, for the process that can be used for a BID.

### **BID Process**

A child may become a foster youth as the result of a dependency or delinquency petition filed in juvenile court or a voluntary placement agreement. When such a foster youth is removed from their home as a result of these circumstances, or changes placement, the youth must be permitted to remain in their SOO, unless there is a determination that it is not in their best interest to do so. Federal guidance states the BID to be based on the following factors:

- Preferences of the child
- Preferences of the child's parent(s) or education decision maker(s)

- The child's attachment to the school, including meaningful relationships with staff and peers
- Placement of the child's sibling(s)
- Influence of the school climate on the child, including safety
- The availability and quality of the services in the school to meet the child's educational and socioemotional needs
- History of school transfers and how they have impacted the child
- How the length of the commute would impact the child, based on the child's developmental stage
- Whether the child is a student with a disability under the Individuals with Disabilities in Education Act who is receiving special education and related services, or a student with a disability under Section 504 who is receiving special education or related aids and services and, if so, the availability of those required services in a school other than the SOO
- Whether the child is an English learner and is receiving language services, and, if so, the availability of those required services in a school other than the SOO, consistent with Title VI and the Equal Education Opportunity Act
- LEAs should coordinate with the child welfare agency to develop a dispute resolution process to address disagreements
- To the extent feasible and appropriate, a child must remain in his or her SOO while awaiting a decision to reduce the number of school moves

California statutes and rules of court provide that the ERH and student make the decision whether the student will remain in their SOO (*EC 48853[a][3]*, *EC 48853.5[f][6 & 7]*, *WIC 361[a][4][A]*, *WIC 319[j]*, *WIC 726[c][1]*, and *CRC 5.650* and *5.651*). As part of this process, the LEA is required to designate a staff person as the educational liaison for a foster child<sup>1</sup> (this will be referred to as the educational liaison). The educational liaison will collaborate with the ERH and student to make a BID, as detailed below.

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<sup>1</sup> The educational liaison must also do both of the following [*EC 48853.5(c)*]:

- 1) Ensure and facilitate the proper educational placement, enrollment in school, and checkout from school of foster children
- 2) Assist foster children when transferring from one school to another school or from one school district to another school district in ensuring proper transfer of credits, records, and grades

## **California SOO Rights**

Foster youth have the right to remain in their SOO (*EC 48853.5*[f][1–4]).

The Education Code delineates the following rights related to SOO and matriculation:

- At the initial detention or placement, or any subsequent change in placement of a foster child, the LEA serving the foster child shall allow the foster child to continue his or her education in the SOO for the duration of the jurisdiction of the court.
- If the jurisdiction of the court is terminated before the end of an academic year, the LEA shall allow a former foster child who is in kindergarten or any of grades one through eight, to continue in the SOO through the duration of the academic school year.
- If the jurisdiction of the court is terminated while a foster child is in high school, the LEA agency shall allow the former foster child to continue his or her education in the SOO through graduation.
- To ensure that the foster child has the benefit of matriculating with his or her peers in accordance with the established feeder patterns of school districts, if the foster child is transitioning between school grade levels, the LEA shall allow the foster child to continue in the school district of origin in the same attendance area, or, if the foster child is transitioning to a middle school or high school, and the school designated for matriculation is in another school district, to the school designated for matriculation in that school district.

## **Role of the Educational Liaison for Foster Children in the BID Process**

The educational liaison, in consultation with, and with the agreement of, the foster child and the person holding the right to make educational decisions for the foster child, may recommend, in accordance with the foster child's best interests, that the foster child's right to attend the SOO be waived and the foster child be enrolled in a public school that pupils living in the attendance area in which the foster child resides are eligible to attend (*EC 48853.5*[f][6 & 7]). Before making a recommendation to move a foster child from his or her SOO, the educational liaison shall provide the foster child and the ERH with a written explanation stating the basis for the recommendation and how the recommendation serves the foster child's best interests.

These requirements are best carried out through a local process to determine if it's in the best interest of a foster youth to waive their right to remain in their SOO, or enroll in a school within the attendance area of their residential placement. The BID should be done in collaboration between the placing agency (child welfare agency, probation), the foster child, the ERH, and the LEA educational liaison. The roles of the educational liaison, child welfare agency, and probation may be "advisory" with respect to school placement decisions and determinations of SOO but are necessary pieces in the BID

process. It is suggested that each LEA work with their child welfare agency to develop written guidelines that create a process to be used when a BID is required. The LEA and the county placing agency are encouraged to collaborate to ensure maximum use of available federal moneys, explore public-private partnerships, and access any other funding sources to promote the well-being of foster children through educational stability (*EC 48853.5[f][10]*).

### **Role of the Child and Family Teams in a BID**

Placing agencies, such as child welfare agencies and probation departments, have a significant role in ensuring that a child is provided with educational stability. Placing agencies and other parties must collaborate to maintain stable school placements for foster youth (*WIC 16501.1, EC 48850[a]*). The BID could take place during a Child and Family Team meeting. To do so, the ERH must be included in discussions about whether it is in the youth's best interests to remain in the SOO, or attend a different school (*WIC 16501[a][5][C][ii]*). To meet the requirements of a BID, the LEA's educational liaison should also participate. LEAs and local child welfare agencies should collaborate to develop a joint process for making BIDs. The process should consider multiple student-centered factors as mentioned previously in this guidance. Transportation costs should not be a factor in determining best interest. For additional guidance on BIDs, please consult Federal Department of Education Non-Regulatory Guidance "*Ensuring Educational Stability for Children in Foster Care*" (<https://bit.ly/3ev2QLj>).

### **Exemption for Foster Youth Residing in Emergency Shelters**

There is one narrow exception to the requirement that a foster youth has the right to remain in their SOO and that a BID is required to determine when it is not in their best interest to do so. This exception allows a child to receive educational services on a temporary basis during the time they reside at an emergency shelter *pending* the making of educational placement decisions. These placement decisions must still be conducted as required by *EC 48853(g)(1-2)*. These subsections read:

(g)(1) Foster children living in emergency shelters, as referenced in the federal McKinney-Vento Homeless Assistance Act (42 USC Sec. 11301 et seq.), may receive educational services at the emergency shelter as necessary for short periods of time for either of the following reasons:

(A) For health and safety emergencies

(B) To provide temporary, special, and supplementary services to meet the child's unique needs if a decision regarding whether it is in the child's best interests to attend the SOO cannot be made promptly, it is not practical to transport the child to the SOO, and the child would otherwise not receive educational services

(g)(2) The educational services may be provided at the shelter pending a determination by the person holding the right regarding the educational placement of

the child.

## Disputes

If a dispute arises regarding the request of a foster child to remain in the SOO, the foster child has the right to remain in the SOO pending resolution of the dispute. The dispute shall be resolved in accordance with the existing dispute resolution process available to a pupil served by the LEA (*EC 48853.5*[f][9]). If a complaint is filed, the school has 60 days to investigate and provide a written response. For information about how to file a complaint, please visit the CDE Uniform Complaint Procedures (<https://bit.ly/3cDJwIU>), or call the CDE Integrated Student Support and Programs Office at 916-319-0836.

For information on foster youth education rights, please utilize the following resources:

1. Summary of Foster Youth Education Rights Provided by the CDE: Foster Youth Education Rights (<https://bit.ly/3n1eTBY>)
2. California Foster Youth Education Law Fact Sheets (<https://bit.ly/3jd2312>)

## Definitions

### ***Foster Youth:***

The definition of “foster youth” in California goes past school stability rights and includes educational rights and school placement. It is also broader than the federal definition of foster care in the *Fostering Connections to Success and Increasing Adoptions Act of 2008 (PL 110–351)* and includes children who are the subject of a petition filed in juvenile court pursuant to either *WIC* Section 300 or 602, whether or not they have been physically removed from the home. As set forth in *EC 48853.5(a)*:

“Foster child” means a child who has been removed from his or her home pursuant to Section 309 of the *WIC*, is the subject of a petition filed under Section 300 or 602 of the *WIC*, or has been removed from his or her home and is the subject of a petition filed under Section 300 or 602 of the *WIC*.

For the purposes of this guidance document, school stability applies to foster youth who have experienced a placement change in their residency as stipulated in *EC 48853.5 (f)(1)*. Here are some examples of children and youth that have experienced a change in residential placement where a BID would be applicable. This is not an exhaustive list.

- A youth who is the subject of a petition filed under *WIC* Section 300, who was living with their parents, but has been placed in a foster or group home
- A youth who is the subject of a petition filed under *WIC* Section 300, who was living in a foster home, but has been placed back with their

parents

- A youth who is the subject of a petition filed under WIC Section 300, who was living with their mom, but has been placed in their father's (or other relative's) home
- A youth who is the subject of a petition filed under WIC Section 602, who was placed in a group home, but has been placed back with their parents
- A youth who is the subject of a petition filed under WIC Section 602, who was detained in juvenile hall, but has been placed back with their parents
- A youth who is the subject of a petition filed under WIC Section 602, who was detained in juvenile hall, but has been placed with their aunt, with whom they were not previously residing

### ***School of Origin:***

SOO is defined in *EC* 48853.5(g) as:

1. The school in which the students was last enrolled
2. The school the child attended when permanently housed (prior to removal from their home)
3. Any other school the child attended within the immediately preceding 15 months to which the child feels connected

### ***Education Rights Holder:***

The parent or guardian retains the right to make educational decisions for their child, even if that child is a foster youth. The only way in which a parent or guardian's rights to make educational decisions can be taken away is for a court to terminate or suspend those rights. In such event, an individual must be appointed by the court following the *CRC* Rule 5.650. The *CRC* refers to this individual as an ERH. The ERH has all the educational decision-making rights that are normally held by a parent or guardian.

### **Legal References**

- AB 403, Chapter 773 (<https://bit.ly/30eOM0n>);
- *EC* Section 48850 (<https://bit.ly/3jf5Smx>);
- *EC* Section 48853 (<https://bit.ly/2GcZzSb>);
- *EC* Section 48853.5 (<https://bit.ly/30fRXoU>);

- *ACL* 12–70 (<https://bit.ly/3cHHLdD>);
- *ACL* 11–51 (<https://bit.ly/2SbO7Zq>);
- *PL* 110–351 (<https://bit.ly/3cJ7Qc9>);
- *WIC* Section 319 (<https://bit.ly/3jhGfBm>);
- *WIC* Section 361 (<https://bit.ly/3mYqPV0>);
- *WIC* Section 726 (<https://bit.ly/3cOxmWY>);
- *WIC* Section 16501 (<https://bit.ly/36i9ekQ>);
- *WIC* Section 16501.1 (<https://bit.ly/3l25yll>);
- *CRC* Rule 5.650 (<https://bit.ly/30kE8Wd>);
- *CRC* Rule 5.651 (<https://bit.ly/348sqz5>)

If you have any questions regarding this subject, please contact the CDE’s Integrated Student Support and Programs Office via email at [FOSTERYOUTH@cde.ca.gov](mailto:FOSTERYOUTH@cde.ca.gov) or by phone at 916-319-0836, or the CDSS Permanency Policy Bureau at [FosterCareEducation@dss.ca.gov](mailto:FosterCareEducation@dss.ca.gov) or by phone at 916-657-1858.

Sincerely,

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